IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 150 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
APOLLO VIKAS STEELS (P) LTD - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR RK PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 22/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under section 256(1) of the Income Tax Act,1961 (the Act) at the instance of the Commissioner of Income Tax.

> "Whether the Appellate Tribunal is right in law and on fact in holding that ship breaking was manufacturing activity and therefore the assessee was entitled to deduction under section 32A, 80-HH and 80-I?"

2 The Assessment Year is 1985-86 and the corresponding accounting period is 30/6/1984.

3 Heard Mr.M.R.Bhatt, learned Senior Standing Counsel on behalf of the applicant-revenue and Mr.B.D.Karia, learned Advocate on behalf of the respondent-assessee.

4 It is common ground between the parties that the controversy in issue stands concluded in favour of the revenue by a decision of this Court in case of *Commissioner of Income Tax v/s. Vijay Ship Breaking Corporation, (2003) 261 ITR 113.* In the circumstances, it is not necessary to set out the facts and contentions in detail.

5 Applying the ratio of the aforesaid decision to the facts of the present case, the question referred is answered in the negative i.e. in favour of the revenue and against the assessee.

6 At this stage, Mr.B.D.Karia, learned Counsel for the respondent-assessee states that the

aforesaid decision of this Court has been challenged before the Supreme Court and that the Supreme Court has granted Leave to Appeal. He, therefore, prays for certificate under section 261 of the Income Tax Act,1961.

7 In view of the aforesaid statement that the SLP against the aforesaid decision is granted, which statement is not disputed by the learned Counsel for the revenue, we certify that, this is to be a fit case for appeal.

8 Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani,J)

m.m.bhatt